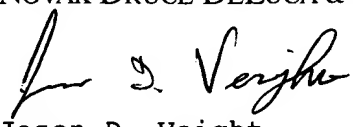
Applicants herewith submit a Declaration which is duly executed by Dr. Witschel, one of the inventors of the invention disclosed and claimed in the present application. Dr. Witschel's Declaration includes the data which were previously presented by applicants. It is further respectfully solicited that the Examiner give full and due consideration to applicants' arguments, presented in their previous reply, why the Claims of ***Otten et al.*** when taken in view of the disclosure of ***Barton*** cannot be deemed to establish that the subject matter of applicants' claims was obvious at the time the invention was made. In light of the attached and the remarks already presented by applicants in their previous reply it is therefore respectfully requested that the Examiner favorably reconsider the rejection of applicants' Claims 1 to 7, 10, 17, 22 and 23 under the judicially created doctrine of obviousness-type double patenting based on the claims of ***Otten et al.*** and the disclosure of ***Barton***. Favorable action is solicited.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a *two* month extension of time be granted in this case. The respective *$450.00* fee is paid by credit card (Form PTO-2038 enclosed).

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,
NOVAK DRUCE DELUCA & QUIGG, LLP



Jason D. Voight
Reg. No. 42,205

1300 Eye Street, N.W.
Suite 400 East Tower
Washington, D.C. 20005
(202) 659-0100

Encl.: Dr. Witschel's Declaration dated May 30, 2005

JDV/BAS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )
Witschel et al. )
)
Serial No. 09/763,704 )
) Group/Art Unit: 1625
Filed: 02/26/01 )
) Examiner: Celia C. Chang

For : Cyclohexenonquinolinoyl-derivatives as herbicidal agents

## DECLARATION

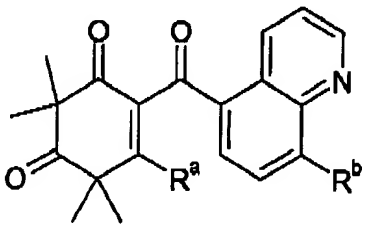
1. I, Matthias Christan Witschel, Dr. rer. nat., a citizen of the Federal Republic of Germany, hereby declare as follows:

   I am a fully trained chemist having studied biology at the University of Erlangen, Nürnberg, Germany, from 1985 to 1994. I received the doctorate (PhD) by said university in 1994. From 1994 to 1995 I did postdoctoral research at Stanford University. I joined BASF Aktiengesellschaft of 67056 Ludwigshafen, Germany in 1996, and have since then been working in the field of herbicides, and am therefore fully conversant with the prior art.

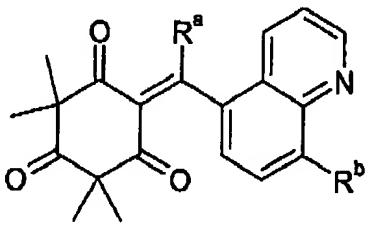
   I am one of the inventors of the subject-matter disclosed and claimed in Appl. Ser. No. 09/763,704 and I am therefore familiar therewith.

2. I have read and fully understood the Office Action of February 1 2005 and the references cited therein by the Examiner and conceived the comparative tests described below.

3. The following compounds 1 to 11 of the general formulae Ia and Ib were tested with respect to their herbicidal activity. The meanings of the radicals $R^a$ and $R^b$ are given in table 1.

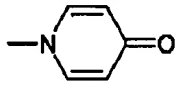



(Ia)




(Ib)

Table 1:

| Compound No. | Formula | $R^a$ | $R^b$ | Example Nr. |
|---|---|---|---|---|
| 1 | Ia | Cl | F | 2.23 |
| 2 (comp) | Ia | OH | F | 12.03 of US 6479436 |
| 3 | Ia | O-C(O)-$SCH_3$ | F | 2.17 |
| 4 | Ia | F | Cl | 2.57 |
| 5 (comp) | Ia | OH | Cl | 12.05 of US 6479436 |
| 6 | Ib | Cl | Cl | 3.1 |
| 7 | Ib | S-C(O)-$N(CH_3)_2$ | Cl | 3.4 |
| 8 | Ib |  | Cl | 3.5 |
| 9 | Ia | $OCH_3$ | $CH_3$ | 2.18 |
| 10 (comp) | Ia | OH | $CH_3$ | 12.01 of US 6479436 |
| 11 | Ib | 1,2,4-triazin-4-yl | $CH_3$ | 3.2 |

comp = comparative compound

The tests were performed as a post-emergent treatment as described on page 89 of the application (greenhouse experiments):

Test plants were grown in plastic pots of approximately 12.5 cm in diameter in a substrate provided with sufficient nutriants and water to a height of 3 to 15 cm, depending on the growth habit. The plants were then treated with aqueous spray containing the active ingredient. The rate of application were 0.500, 0.250, 0.125, 0.0624, 0.0312 or 0.0156 or 0.0078 kg/ha of active substance.

Depending on the species the plants were kept at 10-25°C or 20-35°C for 2 to 4 weeks. During the test period, the plants were tended, and their response to the individual treatments was evaluated. Evaluation was carried out using a scale from 0 to 100. 100 means complete (100 %) destruction of at least the above-ground parts of the plants and 0 means no damage or normal course of growth. The results obtained are given in tables 2 to 9.

Table 2:

| | Compound 1 | | Comparative Compound 2 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.0312 | 0.0156 | 0.0312 | 0.0156 |
| Test plants | | | | |
| Echinocloa cruss galli | 85 | 85 | 85 | 70 |
| Galium aparine | 85 | 80 | 80 | 75 |
| Polygonum persicaria | 98 | 98 | 70 | 60 |
| Setaria faberi | 80 | 80 | 60 | 40 |

Table 3:

| | Compound 4 | | Comparative Compound 5 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.0625 | 0.0312 | 0.0625 | 0.0312 |
| Test plants | | | | |
| Zea mays | 0 | 0 | 50 | 40 |
| Abuthilon theoprasti | 100 | 95 | 80 | 80 |
| Brachiaria plantaginea | 95 | 95 | 85 | 80 |
| Echinocloa cruss galli | 100 | 95 | 80 | 75 |
| Galium aparine | 98 | 98 | 75 | 60 |
| Ipomoea spp. | 95 | 90 | 80 | 75 |

Table 4:

| | Compound 9 | | Comparative Compound 10 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.0625 | 0.0312 | 0.0625 | 0.0312 |
| Test plants | | | | |
| Triticum aestivum | 0 | 0 | 20 | 15 |
| Chenopodium album | 90 | 90 | 80 | 75 |
| Galium aparine | 95 | 90 | 85 | 75 |
| Sinapsis alba | 95 | 85 | 80 | 75 |

Table 5:

| | Compound 3 | | Comparative Compound 2 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.125 | 0.0625 | 0.125 | 0.0625 |
| Test plants | | | | |
| Amaranthus retroflexus | 98 | 85 | 90 | 75 |
| Echinocloa cruss galli | 100 | 90 | 75 | 65 |
| Panicum miliaceum | 95 | 95 | 95 | 80 |

Table 6:

| | Compound 6 | | Comparative Compound 5 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.0625 | 0.0312 | 0.0625 | 0.0312 |
| Test plants | | | | |
| Chenopodium album | 95 | 95 | 95 | 85 |
| Galium aparine | 98 | 95 | 75 | 60 |
| Polygonum persicaria | 95 | 90 | 90 | 85 |
| Sinapsis alba | 98 | 95 | 90 | 85 |

Table 7:

| | Compound 6 | | Comparative Compound 5 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.500 | 0.250 | 0.500 | 0.250 |
| Test plants | | | | |
| Alopecurus myosuroides | 98 | 98 | 90 | 90 |
| Amaranthus retroflexus | 100 | 100 | 90 | 80 |
| Avena fatua | 95 | 90 | 95 | 80 |

Table 8:

| | Compound 11 | | Comparative Compound 10 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.125 | 0.0625 | 0.125 | 0.0625 |
| Test plants | | | | |
| Chenopodium album | 98 | 95 | 95 | 80 |
| Echinocloa cruss galli | 95 | 95 | 95 | 90 |
| Galium aparine | 95 | 95 | 90 | 85 |
| Ipomoea spp. | 95 | 90 | 90 | 80 |
| Sinapsis alba | 95 | 85 | 95 | 75 |

Table 9:

| | Compound 8 | | Comparative Compound 5 | |
|---|---|---|---|---|
| Application rate [kg/ha] | 0.250 | 0.125 | 0.250 | 0.125 |
| Test plants | | | | |
| Abuthilon theoprasti | 98 | 98 | 85 | 85 |
| Alopecurus myosuroides | 100 | 100 | 85 | 85 |
| Amaranthus retroflexus | 95 | 85 | 65 | 50 |
| Echinocloa cruss galli | 100 | 100 | 90 | 85 |
| Gallium aparine | 100 | 100 | 75 | 75 |

Table 10:

| Scientific Name | common name |
|---|---|
| Abuthilon theoprasti | velvetleaf |
| Alopecurus myosuroides | foxtail |
| Amaranthus retroflexus | pigweed |
| Avena fatua | Wild oat |
| Brachiaria plantaginea | Alexander grass |
| Chenopodium album | Lambsquarter |
| Echinocloa cruss galli | Barnyard grass |
| Gallium aparine | Catchweed |
| Ipomoea spp. | Morning glory |
| Panicum miliaceum | Millet common |
| Polygonum persicaria | Ladysthumb |
| Setaria faberi | Foxtail giant |
| Sinapsis alba | White mustard |
| Triticlum aestivum | Winter wheat |
| Zea mays | Corn |

The data presented in tables 2 to 9 demonstrate that replacing the hydroxyl group in compounds of prior art US 6,479,436 by halogen like fluoro or chloro, by methoxy, methylthiocarbonyloxy, dimethylaminocarbonylthio or by N-bound heterocycles such as 1,2,4-triazol-1-yl or 4-oxo-1,4-dihydropyridin-1-yl lead to an increased herbicidal activity, in particular at lower application rates. The data in tables 2 and 3 demonstrate an increased tolerance by crop plants.

4. The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishably by fine of imprisonment or both, under section 1001 of title 18 of the U.S. code and that such willful false statements may jeopardize the validity of the above-identified application or patent issuing thereon.

Ludwigshafen, 30.5.05 Matthias Gobbel